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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1938.

No. ..... Original.

THE COMMONWEALTH OF MASSACHUSETTS,
Complainant,

vs.

THE STATE OF MISSOURI et al.,
Respondents.

BRIEF

On Behalf of Respondents, St. Louis Union Trust Company, Trustee, and St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy, Trustees, on Question of Jurisdiction of the Court.

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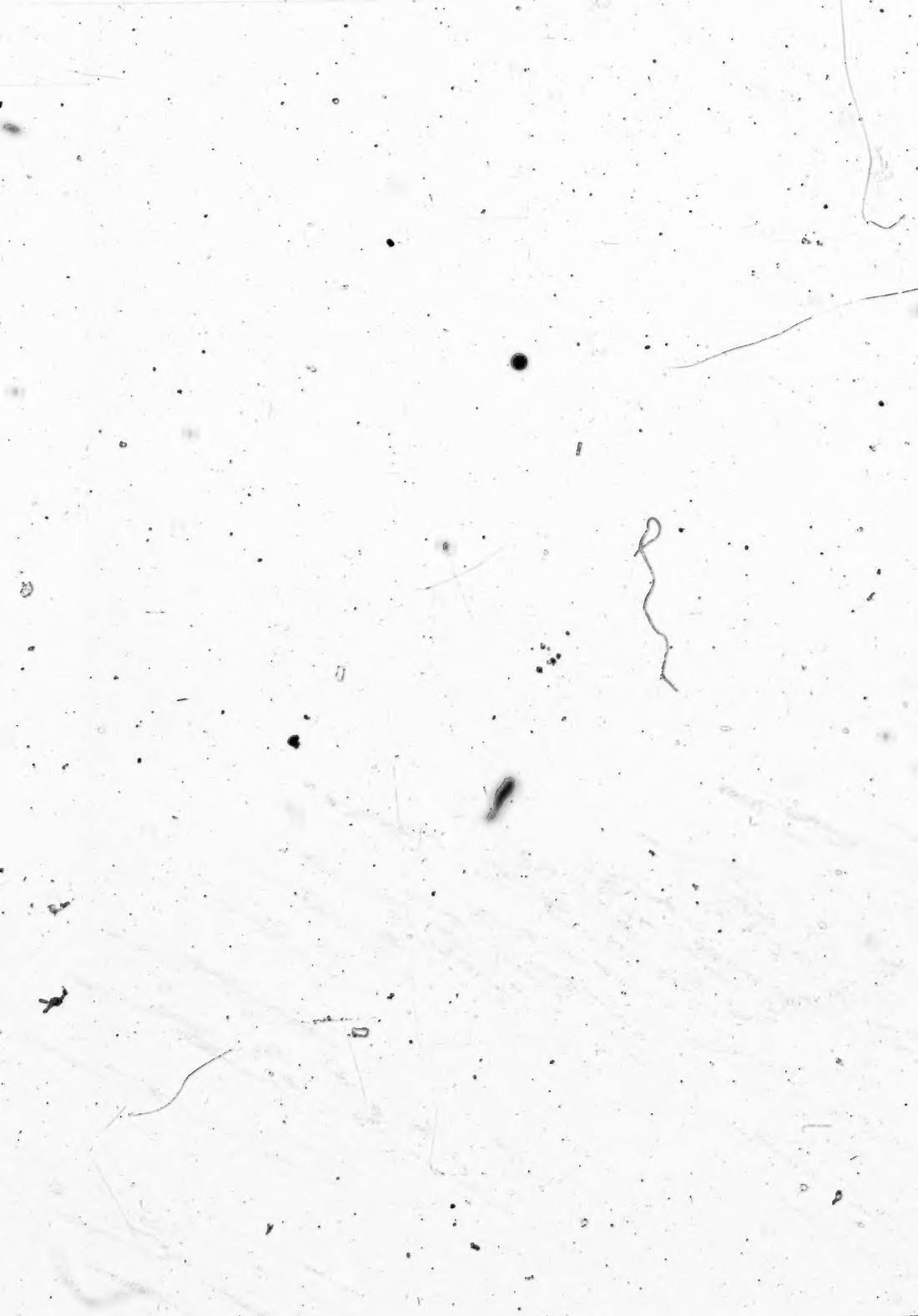

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BRIEF

On Behalf of Respondents, St. Louis Union Trust Company, Trustee, and St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy, Trustees, on Question of Jurisdiction of the Court.

STATEMENT OF THE CASE.

On October 24, 1938, the Commonwealth of Massachusetts applied for leave to file a bill of complaint against: the State of Missouri; St. Louis Union Trust Company, as Trustee under indenture of trust made February 14, 1921, by Madge Barney Blake; St. Louis Union Trust Company, as Trustee under indenture of trust made January 11, 1929, by Madge Barney Blake; and St. Louis Union Trust Company, Charles B. Maloy and Clarence E. Maloy, Trustees under indenture of trust made May 20, 1935, by Madge Barney Blake, as respondents.

On November 7, 1938, this Court entered its order requiring the respondents to show cause why leave should not be granted the complainant, the Commonwealth of Massachusetts, to file its bill of complaint. Separate returns were, pursuant to such order, filed by the respondent State of Missouri, and by the respondent Trustees.

On June 5, 1939, this Court set the cause for hearing on October 9, 1939, on the question of its jurisdiction.

From the allegations of the bill of complaint the following facts appear:

Mrs. Blake died on July 12, 1935, a citizen and resident of Massachusetts (Bill, § 6, p. 7). Prior to her death she had, by instruments respectively dated February 14, 1921, January 11, 1929, and May 20, 1935, transferred to St. Louis Union Trust Company, as Trustee, notes, bonds, shares of stock, and other intangible personal property, to be held in trust for uses and purposes defined in the instruments (Bill, §§ 3, 4, 5, pp. 4-7). By the terms of each of the instruments, she reserved the right to receive the net incomes of the various trust estates for and during her lifetime. The trusts of February 14, 1921, and May 20, 1935, were revocable (Ex. A, Sec. 4, Bill p. 28; Ex. C, Sec. 9, Bill p. 39). That of January 11, 1929, was irrevocable (Ex. B, Bill p. 33). The instruments provided for the complete disposition of the trust properties after the death of Mrs. Blake. Designed upon a common pattern, they made provisions for certain specific gifts and for the setting apart of certain trust funds for the benefit of named beneficiaries, the residue (and the remainders, after satisfaction of certain life interests and annuities) to pass to certain named charitable institutions, some of which existed under the laws of Missouri, some under the laws of Massachusetts, and some under the laws of other states. The respondents, Charles B. Maloy and Clarence E. Maloy,

became Trustees of the trust of May 20, 1935, upon the death of Mrs. Blake and according to the terms of the instrument of that date (Ex. C, Sec. 4, Bill p. 38).

Although it does not appear from the bill of complaint, it will be alleged, if leave be granted to file the bill, in any answer thereto, and presumably it will be admitted by the other parties, that Mrs. Blake had been a resident of Missouri until her marriage on June 23, 1913, to Dr. John Bapst Blake, and that the creation of the trusts in Missouri was the outgrowth of her long prior residence in Missouri and represented continued transaction of her business through financial institutions in Missouri with whom she had been accustomed to deal.

The aggregate market value of the three trust estates at the death of Mrs. Blake was ~~$1,850,789~~.77 (Bill, § 7, p. 8).

Mrs. Blake left a will which was admitted to probate by the Probate Court of the County of Suffolk, Massachusetts, and a small estate valued at $12,646.02 was administered by the Boston Safe Deposit and Trust Company, as Executor under the will (Bill, § 8, p. 8). This probate estate was fully exhausted by the payment of costs of administration and Federal estate taxes. For the purpose of the Federal estate tax, the value of the assets in the three trust estates was included in the gross estate of the decedent (Bill, § 9, p. 9).

The bill of complaint discloses further that after the death of Mrs. Blake, both Massachusetts and Missouri sought, under their respective inheritance tax laws duly pleaded, to exact an inheritance or succession tax, computed upon the value of the assets included in the three trust estates at the date of Mrs. Blake's death (Bill, §§ 10, 11, 12, 13, pp. 9-13). Massachusetts claims inheritance or succession taxes aggregating $137,000.00 (Bill, p. 13) and Missouri claims inheritance or succession taxes aggre-

gating $182,349.69 (Bill, p. 11), computed in each case upon the value of the same trust assets. Assuming that such taxes are exigible in respect of the assets of all three trusts, by either of the states, the amount of the taxes claimed by such state is not in dispute.

The Commonwealth of Massachusetts was confronted by a situation where (as pleaded) there were "no persons or property subject to the processes of the courts of" Massachusetts "against whom or which the Commonwealth may proceed in the collection or attempted collection of its said tax, for the reasons that the assets composing the estate in Massachusetts would be exhausted in the payment of administration expenses and Federal estate taxes and that the Statute of the Commonwealth purports to levy and assess succession taxes upon the Trustees with respect to the trust property and not upon the Executors" (Bill, § 15, p. 13).

Missouri in turn was confronted with the provisions of its own reciprocity statute (R. S. Mo. 1929, Section 576), which provided that the tax imposed by its inheritance tax law should not be payable in respect of personal property (except tangible personal property having an actual *situs* in Missouri) if the transferor at the time of his or her death was a resident of a state which, at the time of his or her death, "did not impose a transfer tax or death tax of any character in respect of property of residents" of Missouri (except tangible personal property having an actual *situs* in the foreign state) (Bill, § 10, p. 10). Massachusetts was a state which at the death of Mrs. Blake did not impose a transfer tax or death tax in respect of intangible personal property of residents of foreign states, including residents of Missouri, and Mrs. Blake was a resident of Massachusetts (Bill, § 11, p. 12).

Under these circumstances Massachusetts asked leave to file its original bill in this Court.

The respondent Trustees filed a return in substance admitting that the case fell within the constitutional jurisdiction of this Court, but denying that a cause of action was stated in the bill of complaint entitling the complainant to the relief prayed. Among other things, it was asserted in the return that Massachusetts could not, through the jurisdiction of this Court, levy or collect its asserted succession tax, because neither the property transferred nor the persons owning it are within the reach of the processes of the Courts of Massachusetts.

ARGUMENT.

I. The Controversies in This Case Are Justiciable Because They Are of a Civil Nature and Arise Between States of the Union and Between a State and Citizens of Another State— A Preliminary Statement.

It is asserted by Massachusetts that this Court has original jurisdiction in this case under Article III, Section 2, of the Constitution of the United States, because:

1. There is presented a controversy between two or more states, and

2. There is presented a controversy between a state and citizens of another state.

There is no question concerning the sufficiency of the parties requisite under the constitutional provision. Relief is sought by one state against another and by a state against citizens of another state.

The sole question is whether the proposed bill of complaint states a "controversy" between Massachusetts and Missouri, or a "controversy" between Massachusetts and the respondent Trustees, or both.

To determine whether such controversies exist presupposes an analysis of the claimed grievances of the respective parties as disclosed by the pleadings. Although the permission granted by the Court to argue this case is expressly limited to questions of jurisdiction, we trust that indulgence may be granted to a brief examination herein of the issues involved. By examination of such issues, it is not intended to argue their merits and thus to trespass the limits fixed by the Court's order, but to demonstrate the points at which the interests of the respective parties hereto clash, giving rise to justiciable controversies.

It is not intended here to place emphasis upon the existence of a controversy between Massachusetts and the respondent Trustees, since the considerations affecting a controversy between such parties have been developed in the brief for the complainant. If it be assumed, as there contended, for the purposes of this argument only, that Massachusetts may lawfully claim a tax against trustees and trust property outside its boundaries and collect such tax extraterritorially, its attempt in this suit to enforce its claim over the objection of the respondent Trustees constitutes a controversy of the kind referred to in the Constitution because it is asserted by right alleged to be contractual in nature. Moreover, the remedy for the collection of such tax provided by Massachusetts laws (General Laws, chapter 65, section 33) is by action in the nature of an action in contract, or by a suit in equity. Massachusetts' pursuit of a tax gives rise to a controversy of civil and justiciable character. Whether it can succeed or not, in the face of the objections of the respondent Trustees to extraterritorial vitality and extraterritorial enforcement of the Massachusetts tax laws, is a question which would seem to bear, not upon whether there is a controversy between a state and citizens of another state, but upon whether the relief prayed may be granted.

The controversies presented by this case go much deeper than merely the claim of Massachusetts to tax intangibles held in trust in Missouri. Out of a single situation arise controversies in which two states and a group of individual Trustees are involved, with claims of one state against the other, of both states against the Trustees, and of the Trustees against both states, and in all of these controversies and claims all of the parties are concerned. These controversies are of a civil nature involving asserted extraterritorial extensions of taxing power, the

obligatory force of reciprocal exemption laws, and the alleged obligations of the respondent Trustees under the taxing laws of two states. This will appear from the considerations discussed under headings III and IV of this brief.

II. Such Controversies Exist Notwithstanding the Absence of Constitutional Restraints on Double Taxation.

The questions raised in this case have not been decided by the recent decisions of this Court in the cases of *Curry v. McCanless* (1939), 59 Sup. Ct. 900, 83 L. Ed., Adv. Op. 865, and *Graves v. Elliott* (1939), 59 Sup. Ct. 913, 83 L. Ed., Adv. Op. 880. Those cases dealt solely with the constitutional power of states to tax property within the borders of each, exerted within those borders through the courts of each state. Here there is presented an attempt by Massachusetts to impose a tax and a tax lien upon persons and property outside its own borders and to collect that tax in other courts than its own, and an attempt by Missouri to nullify or disregard its own reciprocal exemptions from taxation of intangibles of nonresidents. It thus appears that because of the facts in this case, and the reciprocal exemption contained in the law of Missouri, there can here be only one tax, if in truth there can be any tax at all. In such a situation a controversy arises appropriately to be decided by a court upon an analogy to interpleader under the principle recently decided by this Court in *State of Texas v. State of Florida* (1939), 306 U. S. 398 (Preliminary Print), 59 Sup. Ct. 563, 83 L. Ed., Adv. Op. 549, herein sometimes referred to as the "Green case."

One of the intendments of the pleader of the proposed bill of complaint was to invoke a jurisdiction analogous to that invoked in the Green case, but postulated upon the assumption of a system of single taxation resulting from constitutional restraints. Proceeding from the assumption

that a decedent could have had but one domicile, and that but one state could impose an inheritance or succession tax in the right of a domiciliary state, there was discernible in the Green case a clash between the claims of the various states to the domicile and the resultant tax. The pleader of the bill of complaint herein, proceeding upon the assumption then in acceptation (under *Farmers Loan & Trust Company v. Minnesota* [1930], 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371, and *First National Bank v. Maine*, 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313), that only one state had the constitutional power to impose a succession tax in respect of intangible personal property, obviously saw in the conflicting claims of Massachusetts, as the state of Mrs. Blake's domicile, and Missouri, as the state wherein the trusts were created and managed, the source of an analogous jurisdiction.

The same sort of jurisdiction continues to exist in this case under a statutory, as distinguished from a constitutional, system of single taxation under which there come before the Court the new problems of interstate adjustment inherent in such a system.

III. Controversies Between the States of Massachusetts and Missouri Arise Because Each Denies the Right of the Other to Tax.

(a) *A controversy arises from the assertion by Massachusetts of the vitality of its tax laws in Missouri.*

Throughout the Eighteenth and Nineteenth Centuries English Courts have announced the doctrine in *dicta* that no nation will take notice of the revenue laws of another.

Boucher v. Lawson (1734), Cas. T. Hard. 85, 95 Eng. Rep. 53, 55, 127;

Holman v. Johnson (1775), 1 Cowp. 341, 98 Eng. Rep. 1120;

Planche v. Fletcher (1779), 1 Doug. 251, 99 Eng. Rep. 164;

Sharp v. Taylor (1849), 2 Phill. 801, 41 Eng. Rep. 1153;

Emperor of Austria v. Day (1861), 3 De G. F. & J. 217, 45 Eng. Rep. 861.

See John L. Freeze, "*Extraterritorial Enforcement of Revenue Laws,*" XXIII Washington University Law Quarterly 321.

The principle became crystallized in England in two leading cases in which it was sought to enforce in English courts the payment of taxes to a foreign taxing authority: In *Municipal Council of Sydney v. Bull* (1909), 1 K. B. 7, where the Court denied enforcement of a street improvement tax as against the English owner of property in Sydney, New South Wales; and in *H. M. the Queen of Holland v. Drukker* (1928), 1 Chancery 877, where the Court denied enforcement in England of succession taxes claimed under a Dutch statute against personalty held in England by a Dutch decedent.

In America the doctrine has been followed and applied in:

Ludlow v. Van Rensselaer (N. Y. 1806), 1 Johnson 94;

Maryland v. Turner (1911), 75 Misc. Rep. 9, 132 N. Y. S. 173;

Colorado v. Harbeck (1921), 232 N. Y. 71, 133 N. E. 357;

New York Trust Company v. Island Oil & Transport Corporation (C. C. A. 2, 1926), 11 Fed. (2) 698;

Moore v. Mitchell (C. C. A. 2, 1929), 30 Fed. (2) 600, Affirmed on a limited ground in (1930) 281 U. S. 18, 50 S. Ct. 175, 74 L. Ed. 673.

This Court has twice touched upon the problem, but in each instance found it unnecessary to decide whether a

state might have extraterritorial enforcement of its revenue laws in an original action outside the taxing state, as distinguished from a suit on a judgment obtained in the taxing state on personal service. Thus in *Moore v. Mitchell*, supra, where the Circuit Court of Appeals for the Second Circuit had held that a complaint for delinquent taxes by the County Treasurer of Grant County, Indiana, failed to state a cause of action because the Court could not enforce the revenue laws of a foreign jurisdiction, this Court upheld the result on the ground that the county officers had no standing to bring suit in courts outside of Indiana, saying that it was unnecessary to consider the question whether a Federal Court in one state would enforce the revenue laws of another state. And in *Milwaukee County v. M. E. White Company* (1935), 296 U. S. 268, 56 S. Ct. 229, 80 L. Ed. 220, it was held that full faith and credit should be given in a Federal Court sitting in one state to a judgment for taxes rendered on personal service under the laws and in the courts of another state, the question whether there could be original enforcement outside the taxing state again being reserved.

Examination of the underlying reasons for the doctrine denying extraterritorial enforcement belongs to an argument on the merits. It will suffice to point out here that the issues, as suggested by *Colorado v. Harbeck*, supra, and *Moore v. Mitchell*, supra, go deeper than objections to extraterritorial collection. They involve questions of the vitality of the taxing law itself when sought to be applied to raise obligations and impose liens within the confines of another state.

Quite aside from treating revenue laws as unenforceable outside the state because assimilable to penal laws, and starting from the premise that revenue laws create obligations contractual in nature (*Milwaukee County v. M. E. White Company*, supra), the attempt of Massachu-

setts here is to impose a contractual liability upon trustees who neither made themselves amenable to, nor sought the protection in any way of, the Commonwealth, and to reach over into Missouri in the attempted impressment of a lien on assets held in Missouri.

Thus Massachusetts is not attempting merely to enforce outside her boundaries a liability which accrued within them, but is attempting to base her right upon revenue laws claimed to have extraterritorial effect, and thus to extend the force of her legislation into the realm of another sovereign, so as to impose an obligation against trustees there resident and create a lien on property there located.

That other sovereign, Missouri, of necessity has an interest in the question whether the revenue legislation of Massachusetts may penetrate the boundaries of Missouri. If it may, then a new principle is injected into the law of interstate relations, requiring each state to recognize her sister states as sharing with her, to the extent not prohibited by the Constitution, the taxing power over her subjects and property within her boundaries, and to relinquish her exclusive power over such objects. The assertion of the claim by Massachusetts creates a conflict, supporting the jurisdiction of the Court. The validity of the assertion is another matter.

(b) *A controversy arises from the denial by Missouri of the effect of her reciprocity statute.*

Despite a holding that the Constitution does not inhibit the exaction by two states of an inheritance tax measured by the value of the same property where the owner has divided the incidents of ownership between the two jurisdictions, single taxation has always been regarded by this Court as a desirable end to be brought about by reciprocal legislation. Thus it was said by Mr. Justice Holmes in

Kidd v. Alabama (1903), 188 U. S. 730, at page 732, 23 S. Ct. 401, 47 L. Ed. 669:

> "No doubt it would be a great advantage to the country and to the individual states if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided. But the Constitution of the United States does not go so far."

And it was said by Mr. Justice Stone in *Curry v. McCanless*, supra, 83 L. Ed. Adv. Op., at 875:

> "If we enjoyed the freedom of the framers it is possible that we might, in the light of experience, devise a more equitable system of taxation than that which they gave us."

The movement towards reciprocity in inheritance taxation received its impetus in the recommendation of the National Conference of the National Tax Association at its meeting held in 1924. (See statement of the history in the opinion of Judge Cardozo in *City Bank Farmers' Trust Company v. New York Central Railroad Company* (1930), 253 N. Y. 49, 170 N. E. 489, 490.)

At that time Massachusetts had already made a contribution to a system of single taxation of inheritances by enacting a reciprocity statute. Her legislation from time to time varied between partial reciprocity, complete reciprocity and total exemption of intangible personal property of nonresidents. (See Complainant's Brief, p. 16.) The reciprocity statutes of Massachusetts were given liberal interpretation and effect by the courts. *Bliss v. Bliss* (1915), 221 Mass. 201, 109 N. E. 148. At the death of Mrs. Blake, Massachusetts granted complete exemption from succession taxation upon intangible personal property of nonresident decedents.

Missouri came into this system of single taxation in 1929 (Laws of 1929, pages 102-103) by enacting the following statute (R. S. Mo. 1929, Sec. 576):

> "Sec. 576. *Reciprocity.*—The tax imposed by this article in respect of personal property (except tangible personal property having an actual situs in this state) shall not be payable (a) if the transferor at the time of his death was a resident of a state or territory of the United States, or of any foreign country, which at the time of his death did not impose a transfer tax or death tax of any character in respect of property of residents of this state (except tangible personal property having an actual situs in such state or territory or foreign country), or, (b) if the laws of the state, territory or country of residence of the transferor at the time of his death contained a reciprocal exemption provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property (except tangible personal property having an actual situs therein), provided the state, territory or country of residence of such nonresidents allowed a simliar exemption to residents of the state, territory or country of residence of such transferor * * *."

The extent of reciprocal legislation was commented upon in *Farmers Loan & Trust Company v. Minnesota* (1930), 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371, where it was said that thirty-five states had already in some form granted relief against double taxation.

All of these developments arose from a clear recognition by the states themselves of the iniquity of multiple state taxation of inheritances, and presumably also of the anachronism inherent in subjecting the same property to taxation twice merely because the owner in the course of his business transactions had placed certain incidents of his ownership in a state other than that of his domicile.

Multiple taxation was a penalty imposed on other than purely local dealings.

In view of the holding in *Curry v. McCanless,* supra, and *Graves v. Elliott,* supra, the need for reciprocal legislation to avoid the evils of double taxation becomes of paramount importance. See, Dudley W. Orr, *"Reciprocal Exemptions from Inheritance Taxation,"* 18 Boston University Law Review 39.

Despite the existence at the death of Mrs. Blake of the reciprocity statute in Missouri, and despite the exemption from taxation, granted by the laws of Massachusetts in existence at that time, of the intangible personal property of residents of Missouri, Missouri has refused to give effect in the instant case to the exemption conferred.

Has not Massachusetts an interest in the question whether Missouri legally withholds the relief?

The Constitution, Article I, Section 10, withholds from the states the power to enter into agreements or compacts with each other without the consent of Congress. Reciprocity did not reach the dignity of compacts or agreements between states, but the enactment of mutual resiprocity laws did amount to the assumption of mutual obligations between the states. Each state, in the enactment of a reciprocity statute or in the grant of exemption from succession taxes on the intangible personal property of nonresidents, undoubtedly incurred a detriment to its revenue in the interest of exercising its taxing powers in respect of its own citizens and their estates to the exclusion of other states. There was something of the nature of a continuing, although revocable, offer to other states, for the duration of a reciprocity law, to grant exemptions in respect of property of citizens of other states, if the states of their domiciles granted similar exemptions in respect of property of citizens of the legislating state. This was not mere comity, since it contemplated a quid pro quo.

Fairly viewed in the light of historical backgound and in the light of the purposes sought to be accomplished, the Missouri reciprocity statute was more than a mere exemption law. It held forth a promise to grant certain exemptions in respect of property of citizens of other states if the states of their domiciles granted exemptions in respect of property of citizens of Missouri. The circumstances were such that action or forbearance in fulfillment of the conditions by other states should reasonably have been expected by Missouri, and the action or forbearance called for and induced by the enactment was definite and substantial. Massachusetts, induced by exemptions and reciprocal legislation offered by other states, among which Missouri included itself, maintained in force at the death of Mrs. Blake its law exempting intangible personal property of nonresidents, and by so doing forbore imposing a tax in respect of property of Missouri decedents, with definite and substantial detriment to its revenues.

While analogies betwen obligations of sovereign states and obligations of private individuals may not be entirely apt, and judicial relief may be granted to a sovereign state under circumstances which would not justify the relief if the suit were between private parties (*Florida v. Mellon* [1927], 273 U. S. 12, 16, 47 S. Ct. 265, 71 L. Ed. 511; *Missouri v. Illinois* [1906], 200 U. S. 496, 26 S. Ct. 268, 50 L. Ed. 572), yet it appears that the nature of Missouri's obligation to Massachusetts is much like the contractual obligation expressed in Sections 85 and 90 of the *American Law Institute's Restatement of the Law of Contracts*:

> "§ 85. When Assent or Consideration Unnecessary.
>
> "Neither a manifestation of assent, unless the promise is in terms conditional upon such a manifestation, nor consideration is requisite for the formation of an informal contract in the cases enumerated in §§ 86-90."

"§ 90. Promise Reasonably Inducing Definite and Substantial Action.

"A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

See, also:

Williston on Contracts, Revised Edition by Samuel Williston and George J. Thompson, §§ 139-140;
Porter v. Commissioner of Internal Revenue (C. C. A. 2, 1932), 60 Fed. (2) 673;
Carter v. Burns (1933), 332 Mo. 1128, 1144, 61 S. W. (2d) 933;
Underwood Typewriter Company v. Century Realty Company (1909), 220 Mo. 522, 526, 119 S. W. 400.

The estates of Missouri decedents having been benefited by the tax forbearance of Massachusetts, induced, fairly considered, by reciprocity of numerous states, including Missouri, the latter is in an inequitable position and injustice can be avoided only by the enforcement of Missouri's promise.

The interest of a state such as Massachusetts granting an exemption and claiming reciprocity transcends an interest in the individual benefits to accrue to its own citizens (Cf. *Florida v. Mellon* [1927], 273 U. S. 12, 16, 47 S. Ct. 265, 71 L. Ed. 511). It is a public interest which Massachusetts has in the reciprocal exemptions upon which its own exemptions are postulated.

Missouri should not be permitted, unless she can show just cause, to violate her statute when her citizens are entitled to exemptions in Massachusetts. There would be a constitutional inhibition against the subsequent with-

drawal of the benefit conferred at the date of Mrs. Blake's death (Cf. *City Bank Farmers' Trust Company v. New York Central Railroad Company*, supra).

It has been suggested that agreements under the compact clause of the Constitution furnish a field for interstate adjustment of tax problems (Frankfurter and Landis, *"The Compact Clause of the Constitution—A Study in Interstate Adjustments,"* 34 Yale Law Journal, 685, 704). Reciprocity, it is believed, furnishes an expedient of accord without violation of the compact clause, for the obligation arising out of reciprocal legislation is not such as requires the consent of Congress. This is true because:

(1) The obligation, although contractual in nature, is not rested upon manifestation of assent so as to fall within the meaning of "compact" or "agreement" in the constitutional sense, and

(2) There is no interest of the United States involved.

The classic statement of the latter principle is that of Mr. Justice Field in the boundary case, *State of Virginia v. State of Tennessee* (1893), 148 U. S. 503, at pages 518-519, 13 S. Ct. 728, 37 L. Ed. 537:

> "If, then, the terms 'compact' or 'agreement' in the Constitution do not apply to every possible compact or agreement between one state and another, for the validity of which the consent of Congress must be obtained, to what compacts or agreements does the Constitution apply?
>
> "We can only reply by looking at the object of the constitutional provision and construing the terms 'agreement' and 'compact' by reference to it. • • • Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in

the states, which may encroach upon or interfere with the just supremacy of the United States."

See, also:

Stearns v. Minnesota (1900), 179 U. S. 223, 244-245, 21 S. Ct. 73, 45 L. Ed. 162;
Union Branch Rail Road Co. v. East Tennessee and Georgia R. R. Co. (1853), 14 Ga. 327, 339;
State v. Joslin, 116 Kans. 615, 618-619, 227 P. 543.

From the standpoint of this Court, there is presented a problem of co-ordinating and adjusting the reciprocal legislation of states which have contributed by their legislation to the end of achieving a nation-wide system of single state taxation of inheritances.

(c) *A controversy arises on the part of each state against the other by reason of the effect of the other's tax upon its public charities.*

Under the trust instruments executed by Mrs. Blake, the residue of the property transferred in trust and funds remaining in the hands of the Trustees after termination of any trusts specially created are distributable to and among specified charities (Ex. A, Bill, p. 25; Ex. B, Bill, p. 34). Among the charities so entitled are charities located in Massachusetts and other charities located in Missouri. The proposed tax by Massachusetts is computed upon the value of the trust assets without deduction of the value of the property going to the Missouri charities, and the proposed tax by Missouri is computed upon the value of the trust assets without deduction of the value of the property going to the Massachusetts charities.

From early times in England and in America public charities have been regarded as public blessings, the sovereign has been regarded as interested as *parens patriae* in giving force and effect to them, and the Attorney-Gen-

eral, in the case of the states, has been regarded as a proper party to enforce and protect charitable trusts.

Burbank v. Burbank (1890), 152 Mass. 254, 25 N. E. 427;
Dickey v. Volker (1928), 321 Mo. 235, 11 S. W. (2) 278, 62 A. L. R. 865-866;
Schell v. Leander Clark College (D. C. Ia., 1926), 10 Fed. (2) 542, 554;
Zollman, *American Law of Charities*, Sec. 613;
10 Am. Jur., Charities, Sec. 121, p. 672.

Presumably the exemptions from taxation accorded by each state to the charities existing within its own domain were granted because they relieve the public treasury by doing the work which otherwise the sovereign would be required to undertake. By the same token, there is a direct financial interest by the one state in the burdens which are sought to be cast upon its charities by the taxing laws of another state.

IV. Controversies Between the States and Between Each of the States and the Respondent Trustees Arise Out of the Attempts of Each State to Collect a Tax Upon the Trust Property in Missouri.

The respondent Trustees are confronted with conflicting responsibilities: on the one hand, with their responsibility not to make distribution of the trust assets without satisfying all tax liabilities which may constitute liens on such assets, and on the other hand, with the responsibility to the beneficiaries of the trusts not to dissipate the trust assets by payment of taxes for which no valid claim may exist.

Although Mrs. Blake, because of her reservation of powers of revocation, may have made transfers of such nature that they may be subjected to state inheritance or succession taxation by appropriate legislation, and al-

though, because she divided among two jurisdictions the incidents of her ownership, it may be assumed that no constitutional inhibition exists against the imposition by more than one state of such tax, yet the respondent Trustees still must urge, as against Massachusetts, that her laws cannot have extraterritorial effect, and against Missouri, that by her reciprocity statute she waived the tax.

The respondent Trustees are under attack by both states, not knowing which, if either of them, can validly collect a tax, and out of this situation, it is submitted, arise controversies justiciable by this Court involving all of the parties to the proposed bill of complaint.

This is true because of the presence of the following elements:

(a) *The subject matter is single.*

All disputes arise out of a single set of facts, have the same subject matter, namely, the transfers made by Mrs. Blake during her lifetime, and concern identical successions to the beneficial interests in the trust estates. The claims made by the two states are of the same nature, claims for taxes in respect of the same property by reason of the same transfers.

(b) *With the existence of reciprocity, there can be not more than one tax payable.*

Not only do the laws of Missouri enacting reciprocity define an exemption running in favor of the succession from a Massachusetts resident, but they give rise, as hereinbefore contended, to obligations of contractual nature of Missouri to Massachusetts under which the successors in title to Mrs. Blake are the beneficiaries. In spite of the existence of such reciprocity, both states assert the right

to a tax and subject the respondent Trustees to a double risk under a system of taxation intended by both states to be single.

(c) *There being not more than a single liability, damage to the respondent Trustees arises from the multiple assertion of claims.*

Essentially the dilemma of the respondent Trustees is the same as confronted the executors of the Green estate in *State of Texas v. State of Florida*, supra, where the Court determined that a justiciable controversy existed in the nature of an interpleader. The Court, after pointing out that the sole ground for equitable relief in interpleader is the danger of injury because of the risk of multiple suits when the liability is single, made the following statement, submitted to be equally applicable to the case at bar, 306 U. S. 398, at 407-408 (Preliminary print):

> "When, by appropriate procedure, a court possessing equity powers is in such circumstances asked to prevent the loss which might otherwise result from the independent prosecution of rival but mutually exclusive claims, a justiciable issue is presented for adjudication which, because it is a recognized subject of the equity procedure which we have inherited from England, is a 'case' or 'controversy,' within the meaning of the Constitutional provision; and when the case is one prosecuted between states, which are the rival claimants, and the risk of loss is shown to be real and substantial, the case is within the original jurisdiction of this Court conferred by the Judiciary Article. See *Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U. S. 249, 261 et seq., and cases cited."

The risk of damage to the respondent Trustees here is real and substantial in that they too may be subjected to separate suits under a statutory system of single taxation. Moreover, in dealing with Massachusetts and Missouri in

separate suits, the respondent Trustees would be bound to advance in each case the claims of the other state and might readily be met in litigation with Missouri by arguments based upon infractions by Massachusetts of its statutory exemptions to residents of Missouri. Their defenses may be of a character which can theoretically or practically be made only by the other state over which no jurisdiction would exist.

(d) *The assumption of jurisdiction by this Court of the controversies would avoid a multiplicity of suits.*

But for the assumption of jurisdiction by this Court, a separate suit would have to be brought to determine the right of Massachusetts who has within its jurisdiction no persons or property subject to the processes of its courts "against whom or which the Commonwealth may proceed in the collection or attempted collection" of its tax. Such a suit, due to the constitutional issue involved, might ultimately reach this Court for final adjudication as to whether the statutes of Massachusetts may have extraterritorial vitality or may be enforced extraterritorially. Likewise, but for the assumption of jurisdiction by this Court, a separate suit would be required to determine whether despite the reciprocity statute a lien exists in favor of Missouri for any inheritance or succession taxes. Such a suit, to the extent that it involved interpretation of the nature of the obligation of Missouri upon contract not to tax the succession from residents of Massachusetts as distinguished from mere construction of its terms, might readily find its way to this Court for final adjudication. Hence, the assumption of jurisdiction by this Court is in the interest of avoiding a multiplicity of suits in respect of the same subject matter.

The issues, whether, under the reciprocal situation existing between these states, there can be more than one tax,

whether Massachusetts' revenue laws can have effect in Missouri, and whether Missouri has just cause for not applying reciprocity, are all issues in which each of the proposed litigants are vitally interested. They have their fulcrum in the singleness of liability of the respondent Trustees. The existence of this situation clearly discloses that the controveries involved are justiciable and should be adjudicated in one suit.

(e) *The existence of controversies capable of being initiated in other courts presupposes the original jurisdiction of this Court.*

It follows from the interrelationship between the controversies—an interrelationship derived from the conflict of interest of each state in the claim of the other and from the interposition of claims of the respondent Trustees giving rise to a controversy in the nature of an interpleader—that original jurisdiction exists in this court because of the parties involved. If it be suggested that the case presents controversies which should be initiated in Courts other than this Court, and which might reach this Court by appellate procedure, such suggestion, in view of the interrelationship of the controversies, would impliedly admit original jurisdiction, since there are controversies between states and between a state and citizens of another state. The reasoning would admit that the controversies are justiciable because they could be entertained by a Court, and, therefore, this Court having jurisdiction, should not decline it.

V. A Public Interest Is Involved.

Since the decisions in *Curry v. McCanless*, supra, and *Graves v. Elliott*, supra, holding that in a situation such as this, single taxation is not to be achieved by constitutional restraint, it becomes of paramount importance that

rights arising out of efforts by the states themselves to bring about single taxation be clarified and defined. The situation here presented, in which the state of the domicile of the decedent is without jurisdiction over persons or property enabling its tax to be levied and collected within its boundaries, and in which the state of the domicile of the trustees and of the location of the trust property has waived its tax, and in which both states assert a tax and the right to interfere with and deal with the disposition of the property as if each had a right to a tax, requires the supervisory action of this Court. There is not involved merely a question of the rights of the states for themselves and their own financial interests, but also the rights of the states acting or forbearing to act in order to protect and promote the interests of their residents.

Although this Blake case in itself presents issues of public importance and of sufficient magnitude, the issues affect interstate relations in general and the supervisory action of this Court would be in the interest of maintaining harmony in such interstate relations.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. —, Original.—October Term, 1939.

Commonwealth of Massachusetts, Complainant,
vs.
State of Missouri, et al.

Motion for leave to file bill of complaint.

[November 6, 1939.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Commonwealth of Massachusetts asks leave to file a bill of complaint against the State of Missouri and certain citizens of that State. On return to the order to show cause why leave should not be granted, the respondents, while contesting the claims of Massachusetts, stated that they had no cause to show. The Court set the motion for hearing upon the question whether the Court has jurisdiction to entertain the suit. The complainant and the individual respondents contend that the Court has jurisdiction and the State of Missouri now presents the contrary view.

The argument for jurisdiction rests upon two grounds, (1) that there is a controversy between two States, and (2) that there is a controversy between a State and citizens of another State. Constitution, Article III, section 2, paragraphs 1 and 2.

The proposed bill of complaint alleges in substance that Madge Barney Blake, domiciled in Massachusetts, died in 1935 leaving an estate in that State of $12,646.02, which has there been administered, and that this estate will be exhausted by costs of administration and federal taxes; that the decedent, while domiciled in Massachusetts, created three trusts of securities of the value (at the time of death) of $1,850,789.77, the trustees being residents of Missouri where the securities are held; that in two of these trusts, embracing the greater part of the securities, the settlor had reserved the right of revocation; that both Massachusetts and Missouri have inheritance tax statutes subjecting to taxation property passing by deed, grant or gift made or intended to take effect in

possession or enjoyment after the death of the donor; that the Massachusetts statute imposes the tax upon intangibles only when owned by inhabitants of that State; that the Missouri statute exempts from the tax intangibles owned by non-residents who reside in States extending reciprocal provisions to residents of Missouri; that in this instance both States are claiming the exclusive right to impose inheritance taxes upon the trust estates; that Missouri intends to exercise its jurisdiction over the trustees and the property to the exclusion of Massachusetts; that Massachusetts has taken the action required by its statutes to determine the amount of the tax, and to certify it to the persons by whom it is payable, and that there is now due to Massachusetts from the respondent trustees $137,000, if all the trust estates are taxable, and $127,000 if only the property under the two revocable trusts is taxable; and that the tax cannot be collected from any persons or property in Massachusetts.

Alleging the absence of adequate remedy save in this Court sitting as a court in equity, the complainant prays that the Court may adjudge whether Massachusetts or Missouri has "the jurisdiction and lawful right to impose transfer, succession or inheritance taxes" in respect of the several transfers described and to determine that question in favor of Massachusetts. There is also a general prayer for other relief by injunction or otherwise as the Court may deem expedient.

First.—The proposed bill of complaint does not present a justiciable controversy between the States. To constitute such a controversy, it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence. *Florida* v. *Mellon*, 273 U. S. 12, 16, 17; *Texas* v. *Florida*, 306 U. S. 398, 405. Missouri, in claiming a right to recover taxes from the respondent trustees, or in taking proceedings for collection, is not injuring Massachusetts. By the allegations, the property held in Missouri is amply sufficient to answer the claims of both States and recovery by either does not impair the exercise of any right the other may have. It is not shown that there is danger of the depletion of a fund or estate at the expense of the complainant's interest. It is not shown that the tax claims of the two States are mutually exclusive. On the contrary, the va-

lidity of each claim is wholly independent of that of the other and, in the light of our recent decisions, may constitutionally be pressed by each State without conflict in point of fact or law with the decision of the other. *Curry v. McCanless,* 307 U. S. 357; *Graves* v. *Elliott,* 307 U. S. 383. The question is thus a different one from that presented in *Texas* v. *Florida, supra,* where the controlling consideration was that by the law of the several States concerned only a single tax could be laid by a single State, that of the domicile. This was sufficient basis for invoking the equity jurisdiction of the Court, where it also appeared that there was danger that through successful prosecution of the claims of the several States in independent suits enough of the estate would be absorbed to deprive some State of its lawful tax. *Texas* v. *Florida, supra,* 405 406; 408, 410.

Massachusetts urges that a controversy has arisen over the enforcement of the reciprocal provisions of the tax statutes of the two States. It is said that Missouri has enacted reciprocal legislation under which there is exempted from taxation the transfer of intangibles where the transferor at the time of death was a resident of a State which at that time did not impose a transfer or death tax in respect of the intangible property of residents of other States or if the laws of the State of residence contained a reciprocal exemption provision (Missouri Rev. Stat. 1929, c. 1, art. 21, sec. 576); and that Massachusetts since 1927 (St. 1927, c. 156) has granted complete exemption from the inheritance tax to intangible property not belonging to its inhabitants. Mass. General Laws (Ter. Ed.) c. 65, sec. 1. The argument is that Massachusetts and its residents are entitled to the immunity offered by the Missouri statute.

But, apart from the fact that there is no agreement or compact between the States having constitutional sanction (Const. Art. I, sec. 10, par. 3), the enactment by Missouri of the so-called reciprocal legislation cannot be regarded as conferring upon Massachusetts any contractual right. Each State has enacted its legislation according to its conception of its own interests. Each State has the unfettered right at any time to repeal its legislation. Each State is competent to construe and apply its legislation in the cases that arise within its jurisdiction. If it be assumed that the statutes of the two States have been enacted with a view to reciprocity in operation, nothing is shown which can be taken to alter their essen-

tial character as mere legislation and to create an obligation which either State is entitled to enforce as against the other in a court of justice.

The suggestion that residents of Massachusetts are entitled to the immunity offered by the Missouri statute is unavailing, as Massachusetts may not invoke our jurisdiction for the benefit of such individuals. *Oklahoma* v. *Atchison, T. & S. F. Rwy. Co.*, 220 U. S. 277, 286; *Oklahoma* v. *Cook*, 304 U. S. 387, 394.

Nor does the nature of the suit as one to obtain a declaratory judgment aid the complainant. To support jurisdiction to give such relief, there must still be a controversy in the constitutional sense (*Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227, 240, 241) and as between the two States there is no such controversy here.

Second.—Complainant urges that jurisdiction may be sustained in the view that the proposed bill of complaint presents a controversy between Massachusetts and citizens of Missouri. The bill is not aptly framed so as to present such a controversy independently of a controversy between the States. The bill expressly states the issues presented as being (a) whether Massachusetts or Missouri has exclusive jurisdiction over the transfers in trust so as to have the taxing power, and (b) secondarily, whether the State having such jurisdiction can constitutionally reach one of the trusts in which the settlor reserved no right of revocation. And the specific relief sought is that the court may determine which State has the jurisdiction to tax and may award that jurisdiction to Massachusetts as against Missouri. If the gravamen of the proposed bill is deemed to be an assertion of a controversy between the States, jurisdiction to entertain the bill cannot be supported in the absence of the showing of such a controversy. Missouri cannot be brought into court by the expedient of making its citizens parties to a suit otherwise not maintainable against the State.

With respect to the second ground of invoking jurisdiction, as an independent ground, we are virtually asked to disregard the stated objective of the proposed bill, to treat it as amended so as to expunge claims against Missouri and to confine it to claims against the trustees; to consider the bill as no longer asking a declaratory judgment as to which State has power to tax, as not seeking relief in this court "sitting as a court of equity", but, in the light of the general prayer for other relief, as presenting a simple action

against the trustees to recover the amount of the tax claimed to be due Massachusetts irrespective of any claim of Missouri.

If it be possible to consider the proposed bill as thus stripped of its abortive allegations against Missouri and as presenting a cause of action so distinct from that primarily relied upon, still the invocation of our jurisdiction must fail. In the exercise of our original jurisdiction so as truly to fulfill the constitutional purpose we not only must look to the nature of the interest of the complaining State—the essential quality of the right asserted—but we must also inquire whether recourse to that jurisdiction in an action by a State merely to recover money alleged to be due from citizens of other States is necessary for the State's protection. In *Oklahoma* v. *Cook, supra,* we called attention to the enormous burden which would be imposed upon this Court if by taking title to assets of insolvent state institutions, including claims against citizens of other States, a State could demand access to the original jurisdiction of this Court to enforce such claims. To open this Court to actions by States to recover taxes claimed to be payable by citizens of other States, in the absence of facts showing the necessity for such intervention, would be to assume a burden which the grant of original jurisdiction cannot be regarded as compelling this Court to assume and which might seriously interfere with the discharge by this Court of its duty in deciding the cases and controversies appropriately brought before it. We have observed that the broad statement that a court having jurisdiction must exercise it (see *Cohens* v. *Virginia,* 6 Wheat. 264, 404) is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum. *Canada Malting Co.* v. *Patterson Co.,* 285 U. S. 413, 422; *Rogers* v. *Guaranty Trust Co.,* 288 U. S. 123, 130, 131. Grounds for justifying such a qualification have been found in "considerations of convenience, efficiency and justice" applicable to particular classes of cases. *Rogers* v. *Guaranty Trust Co., supra.* Reasons not less cogent point to the need of the exercise of a sound discretion in order to protect this Court from an abuse of the opportunity to resort to its original jurisdiction in the enforcement by States of claims against citizens of other States.

In this instance it does not appear that Massachusetts is without a proper and adequate remedy. Clause 2 of Section 2 of Article

117 merely distributes the jurisdiction conferred by clause one. *Louisiana* v. *Texas*, 176 U. S. 1, 16; *Monaco* v. *Mississippi*, 292 U. S. 313, 321. The original jurisdiction of this Court, in cases where a State is a party, "refers to those cases in which, according to the grant of power made in the preceding clause, jurisdiction might be exercised in consequence of the character of the party, and an original suit might be instituted in any of the federal Courts; not to those cases in which an original suit might not be instituted in a federal Court". *Cohens* v. *Virginia*, *supra*, pp. 398, 399. With respect to the character of the claim now urged, we are not advised that Missouri would close its courts to a civil action brought by Massachusetts to recover the tax alleged to be due from the trustees. The Attorney General of Missouri at this bar asserts the contrary. He says that "it would seem that Massachusetts should be able to bring a suit against the trustees for the collection of its taxes, in either a Missouri state court or in a federal district court in Missouri" and that "such a suit would be of a civil nature and would present a justiciable case or controversy". We have said that the objection that the courts in one State will not entertain a suit to recover taxes due to another or upon a judgment for such taxes, is not rightly addressed to any want of judicial power in courts which are authorized to entertain civil suits at law. It goes "not to the jurisdiction but to the merits", and raises a question which district courts are competent to decide. *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268, 272.

The motion for leave to file the proposed bill of complaint is denied.

It is so ordered.

Mr. Justice BUTLER took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.